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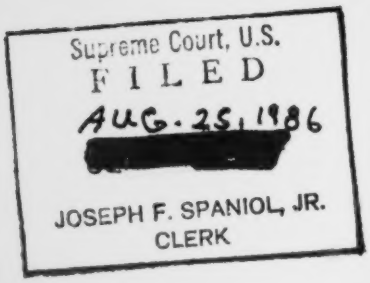

CASE NO:

UNITED STATES SUPREME COURT
OCTOBER, 1986

DAWN DEVELOPERS, INC.,
MURRAY M. GOLUB, and
THOMAS L. DYER,

Petitioners,

vs.

REAL ESTATE CORPORATION OF
FLORIDA, N.V. a Netherlands
Antilles Corporation

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, STATE OF FLORIDA.

DONALD F. WRIGHT, Esquire
WRIGHT & FULFORD, P.A.
145 North Magnolia Avenue
Post Office Box 2828
Orlando, Florida 32802
(305) 425-0234
ATTORNEY FOR PETITIONERS

86PP

QUESTIONS PRESENTED FOR REVIEW:

A. Whether Florida's RICO and/or Civil Theft Statutes are unconstitutional as applied by depriving Petitioners of their property without due process of law by not requiring a criminal charge nor criminal standard of proof prior to imposition of civil penalties for alleged violations of those acts.

B. Whether Florida's RICO and Civil Theft Statutes are an unconstitutional infringement on the right to contract where Petitioners duties were contractual and on breach thereof Petitioners were found liable for civil theft and RICO violations.

C. Whether the Federal

Racketeering Influence and Corrupt Organization Act has prempted State legislation in the area.

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioners, DAWN DEVELOPERS, INC., and MURRAY M. GOLUB, and files this Petition for Writ of Certiorari in compliance with Supreme Court Rules, Rule 21 and state:

I. QUESTIONS PRESENTED FOR REVIEW:

A. Whether Florida's RICO and/or Civil Theft Statutes are unconstitutional as applied by depriving Petitioners of their property without due process of law by not requiring a criminal charge nor criminal standard of proof prior to imposition of civil penalties for alleged violations of those acts.

B. Whether Florida's RICO and Civil Theft Statutes are an

unconstitutional infringement on the right to contract where Petitioners duties were contractual and on breach thereof petitioners were found liable for civil theft and RICO violations.

C. Whether the Federal Racketeering Influenc and Corrupt Organization Act has prempted State legislation in the area.

II. PARTIES TO PROCEEDING BELOW:

The proceeding below was an appeal at the Fifth District Court of Appeal for the State of Florida in the January term of 1986. Although there were consolidated appeals addressed below the relevant parties here are Petitioners, Dawn Developers, Inc., Thomas L. Dyer and Murray M. Golub, and Respondents, Real Estate Corporation of Florida, N.V., a Netherland Antilles Corporation.

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(Decisions and Opinions

Delivered)

IV. This Writ is brought from the District Court of Appeal of the State of Florida, Fifth District, January Term, 1986. Case Numbers 85-721 through 85-730, and 85-927, with a decision filed May 27, 1986, and becoming final June 6th, 1986, after expiration of time for filing of rehearing motions.

V. GROUNDS FOR JURISDICTION:

This Court is vested jurisdiction as this Appeal is taken from a District Court of Appeal of the State of Florida where the decision rendered was a per curiam affirmed that has left no recourse in the State Supreme Court. The inherent finding of the Fifth District Court of Appeal in and for the State of Florida has the effect of making the Statutes addressed in such a appeal repugnant to the Constitution of the United States. Therefore, jurisdiction is proper at the Supreme Court of the United States pursuant to 28 U.S.C. Section 1257(3). That decision of the Fifth District Court of Appeal in and for

the State of Florida was rendered May 27, 1986, and became final June 6, 1986 after the expiration of time to file a motion for rehearing.

VI. CONSTITUTIONAL PROVISIONS

STATUTES INVOLVED IN THE CASE:

18 U.S.C. 1961-1968 (1982);

Florida Statutes 895.05(7), (1985);

Florida Statute 812.014(1), (1985);

Florida Statute 812.035(7), (1985).

VII. STATEMENT OF CASE

March 25, 1982, the Respondent, Plaintiff below REC, filed its complaint for compensatory and punative damages for breach of contract, fraud, conspiracy to defraud, breach of fiduciary duties, conversion, and slander of title against the Defendants, Petitioners herein. Following various Motions the third amended complaint was accepted by the Court alleging breach of contract, fraud, conspiracy to defraud, breach of fiduciary duties, treble and conversion, slander of title, civil theft under Florida Statute Section 812.014(1)(b) and RICO violations under Florida Statutes Section 895.02 at sequence, citing the Civil

Theft as "Racketeering activity". Similar allegations were also made by the Petitioner, Defendant below, in its Counter Claim, however Count I of that Counter Claim also demanded an accounting. A partial summary judgment was granted on behalf of the Plaintiff as to a "contractual breach by Dawn Developers" and specifically related that to a breach of counts I and V of the Third Amended Complaint. The net result of the pre-trial rulings was that the case was to go to trial on the Third Amended Complaint on REC on Dawn Developers, Inc., Murray M. Golub and T.L. Dyer. In addition, the Counter Claim against REC would stand as to breach of

contract and fraud. The case was tried during the period April 9, 1985, through April 13, 1985, and at the conclustion of Plaintiff's case, the Defendants Golub and Dyer moved for directed verdict based in part upon the only evidence of their net worth being income tax returns. The Court denied the Motion and agreed to review it at the close of all the evidence. The Court also denied a directed verdict against the Plaintiff on the RICO Counts. The interrogatory verdict returned by the jury at 1:00 a.m., April 13th, 1985, consisted of the following elements:

1. Breach of Contract: $600,000.00;

2. Fraud: $600,000.00;

3. Conversion of Money: $600,000.00;

4. Breach of Fiduciary Duty to REC: $600,000.00;

5. Civil Conspiracy: $600,000.00;

6. Violation of the Civil Theft Statute: $600,000.00;

7. Violation of the RICO statute: $600,000.00;

8. Punative Damages against Dyer: $100,000.00;

9. Punative Damages Against Golub: $100,000.00;

10. Punative Damages Against Dawn: $250,000.00;

11. REC Fraud on Dawn: No

12. REC'S breach of Contract with Dawn: $250,000.00 The Court applied

prejudgment interest increasing the $600,00.00 award to $872,640.00 and Dawns $250,000.00 Contract award to $363,375.00. Pursuant to the Florida RICO Statute, the Court trebled the $872,640.00 compensatory damages awarded to Plaintiffs increasing the amount to $2,617,920.00.

Timely notices of appeal were filed May 9, 1985, as to the final Summary Judgment in favor of the Counter Defendants. On June 14, 1985, a timely notice of appeal was filed as to the Final Judgment dated April 29, 1985. By Order dated July 10, 1985, all Eleven appeals were consolidated by the Fifth District Court of Appeals in and for the State of Florida. After briefs and

oral argument heard in front of the Fifth District Court of Appeal in and for the State of Florida in its January term, 1986, that Court rendered a decision filed May 27, 1986, which was pre curiam affirmed.

The facts relevant to the questions presented are as follows:

Petitioners and Respondents had entered into various contractual agreements during the term of their dealings. They were involved in the development of real property in Florida where Respondent being the owner of real estate and Petitioners being builders, agreed to build and did build over fourteen hundred single family homes. The profit from said venture being split

between them by contract. As parties to the contract that duty was clearly defined therein and strictly contractual. The imposition of treble damages interferred with their constitutional right to contract and was therefore overbroad as applied and unconstitutional as having deprived the Petitioners of their property without due process of law by penalizing them for actions which although are termed as criminal, were tested by the civil greater weight of the evidence test.

These constitutional issues were not raised in the pleadings, at trial, or on appeal.

VIII. ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF WRIT.

United Sates Constitution as well as the Florida State Constitution guarantees the right of citizens to enter into contracts. However, both the U.S. legislature and the Florida legislature together with other states have passed laws known as RICO Acts which are being applied and construed in an overbroad manner so as to diminish and restrict the constitutionally guaranteed rights of contract. The scenario in this case has become common in the various state courts. These situations are far outside of the clear legislative intent behind the Federal RICO and Florida's RICO laws. These laws indicate in their

preambles that the Statutes promulgated thereunder are designed to punish and deter organized crime activity. Unfortunately, as applied, the Federal and State RICO acts are working to impose a tremendous penalty on what was before a simple breach of contract situation. In the case at hand, the parties were engaged in a business venture, that being that the Respondent was the owner of land and the Petitioners were builders and land developers. The contract between the parties defined the relationship beteen them and the accounting and profit divisions. The Petitioners allegedly breached

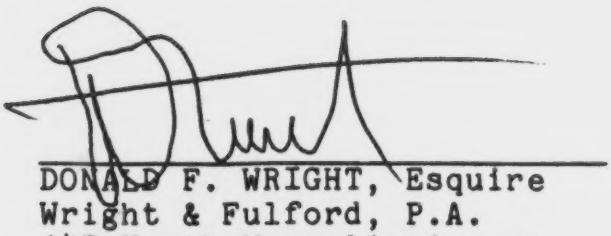
their contract with Respondents by setting up a subcontracting entity which was allegedly not authorized. The facts and circumstances surrounding whether or not this subcontractor was authorized were disputed at trial and in the record.

Because there were multiple homes being constructed, the trial court construed this singular breach of contract to be a pattern of racketeering activity. The individual breaches of contract on the individual homes was apparently construed and qualified under Florida's "Civil Theft" Statute, which when violated more than once qualifies under the Florida RICO Statute.

This Petition should be accepted because the Florida Civil

Theft and RICO Statutes as applied are an infringement upon these parties right to contract. Further, although the legislature intended to punish criminal acts, the Petitioner has been punished without ever having been accused or found guilty under a criminal standard of having committed those acts. Thereby depriving him of his property without due process of law.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Guy B. Bailey and Robbie M. Barr, of Bailey & Dawes, P.A., Interamica Building Ph. 2, 1390 Brickell Avenue, Miami, Florida, 33131, by mail delivery this 17th day of September, 1986.



DONALD F. WRIGHT, Esquire
Wright & Fulford, P.A.
145 North Magnolia Avenue
Post Office Box 2828
Orlando, Florida 32802
(305) 425-0234

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA

FIFTH DISTRICT

JANUARY TERM 1986

DAWN DEVELOPMERS, INC., et al.,

Appellant,

CASE NO: 85-721 through
85-730 and 85-927

v.

COMMUNITY DEVELOPERS OF
ORANGE COUNTY, INC., et al

Appellee.

_____/

Decision filed May 27, 1986.

Appeal from the Circuit Court
for Orange County,
Lon S. Cornelius, Judge.

Donald F. Wright, Timothy R.
Moorhead and Michael E. Nebel,
of Wright & Fulford, P.A.,
Orlando, for Appellants.

Guy B. Bailey, Jr., and
Robbie M. Barr of Bailey &
Dawes, P.A., Miami, for
Appellees.

PER CURIAM.

AFFIRMED.

UPCHURCH, F., SHARP, W. and COWART, JJ., concur.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

CASE NO: CI 82-3048

REAL ESTATE CORPORATION OF
FLORIDA, N.V.,

Plaintiff/Counter-Defendant,

vs.

DAWN DEVELOPERS, INC., et al,

Defendants/Counter-Plaintiff.

FINAL JUDGMENT ON CONTRACT, FRAUD, CONVERSION, CONSPIRACY, CIVIL THEFT, AND R.I.C.O. CLAIMS AGAINST DAWN DEVELOPERS, INC., MURRAY M. GOLLUB, AND THOMAS L. DYER

THIS CAUSE came before the Court for jury trial on Monday, April 7, 1985; the jury heard testimony of witnesses and reviewed extensive documentary evidence, deliberated, and returned the

following verdict (Plaintiff throughout the verdict and for most throughout this judgment is called "REC"; Defendants are called "DAWN", "GOLUB," and "DYER"):

VERDICT

We, the jury, find as follows:

1. The court has determined as a matter of law that the use of "Emery Construction" constituted a breach by Dawn of its contract with REC. Therefore states the amount of damages if any, to REC resulting from this breach. (Do not use any offset or reduction you may or may not find REC owes to Dawn; that is treated separately below.)

$600,000.00

2a. Did Dyer commit graud against REC?

YES __X__ NO _____

2b. Did Golub commit fraud against REC?

YES __X__ NO _____

2c. If your answer tc either 2a or 2b above was "yes," your answer to this question must be "yes." If your answer to 2a and 2b was "no," then your answer to this question must be "no." Did Dawn commit fraud against REC?

YES ___X___ NO _____

2d. State the amount of damages.

$600,000.00

3a. Did Dyer convert money belonging to REC?

YES ___X___ NO _____

3b. Did Golub convers money belonging to REC?

YES ___X___ NO _____

3c. If your answer to either 3a or 3b above was "yes," your answer to this question must be "yes." If your answer to 3a and 3b above was "no," then your answer to this question must be "no." Did Dawn convert money belonging to REC?

YES ___X___ NO _____

3d. State the amount of money converted.

$600,000.00

4a. Did Dyer have and breach a fiduciary duty to REC?

YES ___X___ NO _____

4b. Did Golub have and

breach a fiduciary duty to REC?

YES ____X____ NO _____

4c. If your answer to either 4a or 4b above was "yes," your answer to this question must be "yes." If your answer to 4a and 4b above was "no," then your answer to this question must be "no." Did Dawn have and breach a fiduciary duty to REC?

YES ____X____ NO _____

4d. State the amount of damages REC has sustained.

$600,000.00

5a. Did Dyer conspire with Golub to deprive REC of money?

YES ____X____ NO _____

5b. Did Golub conspire with Dyer to deprive REC of money?

YES ___X___ NO _____

5c. If your answer to either 5a or 5b above was "yes," your answer to this question must be "yes." If your answer to 5a and 5b above was "no," then your answer to this question must be "no." Did Dawn conspire with Golub or Dyer to deprive REC of money?

YES ___X___ NO _____

5d. State the amount of damages resulting to REC.

$600,000.00

6a. Did Dyer violate the civil theft statute?

YES ___X___ NO _____

6b. Did Golub violate the civil theft statute?

YES ___X___ NO _____

6c. If your answer to either 6a or 6b was "yes," your answer to this question must be "yes." If your answer to 6a and 6b above was "no," then your answer to this question must be "no." Did Dawn violate the civil theft statute?

YES ___X___ NO _____

6d. State the amount of damages resulting.

$600,000.00

7a. If your answer to 3a or 6a was "yes", you may answer the following question. If your answer to both was "no," go on to 7c. Did Dyer violate the RICO Statute?

YES ___X___ NO _____

7b. If your answer to 3b or

6b was "yes," you may answer the following question. If your answer to both was "no," go on to 7c. Did Golub violate the RICO Statute?

YES ___X___ NO _____

7c. If your answer to 7a or 7b was "yes," your answer to this question must be "yes." If your answer to 7a and 7b was "no," then your answer to this question must be "no." Did Dawn violate the RICO Statute?

YES ___X___ NO _____

7d. State the amount of damages resulting.

$600,000.00

8. If your answer to 2a, 3a, 4a, or 7a was "yes," state the amount of punitive damages, if any,

against Dyer.

$100,000.00

9. If your answer to 2b, 3b, 4b, or 7b was "yes," state the amount of punitive damages, if any, against Golub.

$100,000.00

10. If your answer to 2c, 3c, 4c, or 7c was "yes," state the amount of punitive damages, if any, against Dawn.

$250,000.00

11a. Did REC and/or the officers and agents thereof commit fraud on DAWN DEVELOPERS, INC.?

YES _____ NO X

11b. If your answer to Question 11a is yes, what is the amount that is due DAWN DEVELOPERS,

INC., for such fraud?

$_____

12a. Did REC breach its contract with DAWN?

YES ___X___ NO _____

12b. If your answer to 12a was "yes," answer the following question. If your answer to 12a was "no," sign and date this verdict form.

12c. Did Dawn after knowing of the claimed breaches or claimed overchanges, ratify or reaffirm the contract by continuing to accept benefits under the contract.

YES _____ NO ___X___

12d. If your answer to 12c was "yes," sign and date this verdict form. If your answer to 12c

was "no," state the amount of compensatory damages sustained by Dawn.

$250,000.00

So say we all this 13th day of April, 1985.

/s/ Raymond P. Simon

Foreperson

STIPULATIONS CONCERNING CERTAIN MATTERS

THE PARTIES made the following stipulations in open court, which the Court approved.

1. The factual issues concerning the awarding of prejudgment interest on the various claims need not be tried by the

jury, but will be determined by the Court following the verdict.

2. The setting of any appropriate attorneys' fee awards need not be tried by the jury, but will be determined by the Court following verdict.

3. The award of $200.00 minimum statutory damages under Fla.Stat. 812.035(7), as amended in 1984, need not be tried by the jury but will be determined by the Court following verdict.

4. REC's claim for slander of title shall be severed from trial of the remaining issues, and will be determined by the Court, sitting without a jury, at a time to be determined by the Court.

5. Dawn's rights to an accounting, being an equity matter, shall be considered by the Court following the jury trial.

FINDINGS OF FACT AND CONCLUSION OF LAW

AND THE COURT, having carefully reviewed the evidence presented at trial, and the other documents, papers and pleadings in the court file, having carefully reviewed the applicable judicial decisions and statutes, and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law.

1. (a) By agreement of counsel, the appropriate date from

which to commence the running of prejudgment interest if the approximate mid-point of the time period of the relevant activities: June 30, 1980; (b) Fla. Stat. 687.01 specified the prejudgment interest rate of 6% per annum until June 30, 1982, and of 12% per annum thereafter; (c) applying these rates to the verdict amounts, from the relevant mid-point until April 13, 1985, the awards are modified as of April 13, 1985 by increasing them all, except the punitive damages awards, by 45.55%. Each $600,000 award, therefore, becomes an $872,640.00 award. Dawn's $250,000.00 contract award increases by $113,375.00 to $363,375.00.

BASED UPON the foregoing, and upon the Court's duty under Fla. Stat. 812.035(7) or 895.05(7), the Court trebles the statutory awards (verdict paragraphs 6d and 7d); each award shall therefore be $2,617,920.00. REC is also entitled "to attorneys' fees in the trial and appellate courts nd costs of investigation and litigation, reasonably incurred." Fla. Stat. 895.05(7).

WHEREFORE, IT IS ORDERED AND ADJUDGED as follows: REAL ESTATE CORPORATION OF FLORIDA, a Netherlands Antilles Corporation, shall have and recover of and from the Defendants, the following sums:

1. From DAWN DEVELOPERS,

INC., a Florida corporation, the total of its highest basic award plus the puntivie award, less the set-off, to with: the sum of TWO MILLION FIVE HUNDRED FOUR THOUSAND FIVE HUNDRED FORTY FIVE AND 00/100 DOLLARS ($2,504,545.00) in good and lawful United States money, for which sum let execution issue.

2. From MURRAY M. GOLUB, individually, the total its highest basic award plus the punitive award, to wit: the sum of TWO MILLION SEVEN HUNDRED SEVENTEEN THOUSAND NINE HUNDRED TWENTY AND 00/100 DOLLARS ($2,717,920.00) in good and lawful United States money, for which such let execution issue.

3. From THOMAS L. DYER,

individually, the total of its highest basic award plus the punitive award, to wit: the sum of TWO MILLION SEVEN HUNDRED SEVENTEEN THOUSAND NINE HUNDRED TWENTY AND 00/100 DOLLARS ($2,717,920.00) in good and lawful United States money for which sum let execution issue.

4. Since Dawn's contract damages have been expended in offsetting REC's award against it, DAWN DEVELOPERS, INC., a Florida corporation, on its counterclaim, shall take nothing by this action, and REAL ESTATE CORPORATION OF FLORIDA, a Netherlands Antilles corporation, shall go hence without day.

5. The first $2,504,545.00 dollars of the awards set forth in Paragraphs 1 through 3 immediately preceeding shall be joint and several as among Dawn, Golub and Dyer; the next $113,375.00 shall also be joint and several, but only as among Golub and Dyer; the punitive awards against Golub and Dyer shall be separate, or several, and not joint.

6. In addition the Court reserve jurisdiction to take evidence and to award REC attorneys' fees due to REC in the proseuction of this action, and to amend this judgment accordingly;

7. In addition, the Court reserves jurisdiction to take

evidence of REC's claim for slander of title and to award damages therefor, if appropriate, by separate final judgment, to be dated as of its rendition.

8. Although the jury has determined Dawn's contract damages, the parties have not agreed whether Dawn is nevertheless entitled to an accounting on its counterclaim. The court therefore reserves jurisdiction concerning that issue and the concomitant modifications which might result in paragraphs 1, 4, and 5 immeidately preceding.

9. Finally, the Court reserves jurisdiction to award REC its costs of investigation and litigation of this action, pursuant

to Fla. Stat. 895.05(7), to enter such other and further orders as may be necessary to enforce this Court's judgment, and to take such other and further action as may be appropriate and authorized by either or both Chapters 812 and 895 of the Florida Statutes.

10. This judgment, and any additional awards pursuant to the reservations set forth in immeidately preceding paragraphs 6, 8 and 9 shall bear interest at the legal rate from and after April 13, 1985.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 26th day of April, 1985.

/s/ Lon S. Cornelius

Circuit Court Judge

Copies furnished to:

GUY B. BAILEY, JR. and ROBBIE M. BARR, Bailey & Dawes, Miami, Counsel for Real Estate Corporation

and to

DONALD F. WRIGHT
Wright Fulford & Winslow, Orlando, Counsel for Dawn Developers, Golub and Dyer

FLORIDA STATUTE 895.05(7)

Any person who is injured by reason of any violation of the provisions of s. 892.03 shall have a cause of action for threefold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred. (a) The Defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section. (b) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

FLORIDA STATUTE 812.014(1)

(1) A person is guilty of theft if he knowlingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit therefrom.

(b) Appropriate the property to his own use or to the use of any person not entitle thereto.

FLORIDA STATUTE 812.035(7)

Any person who is injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037 or s. 812.0081 has a cause of action for threeold the actual damages sustained and, in any such action is entitled to minimum damages in the amount of $200.00. Such person shall also recover court costs and reasonsalbe attorney's fees in the trial and appellate court.

18 U.S.C. 1961-1968 (1982)

1961 Definitions

As used in this chapter-

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more that one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate

shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343, (relating to wire fraud), section 15103, (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State of local law inforcement), section 1951 (relating to interference with commerce, robbery,

or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegl gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), section 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans

to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale or securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States:

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth or Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual, or entity capable of holding a legal or beneficial

interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excludng any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United

States, a State or political subdivision thereof, or which is unenforceable under State of Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State of political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of

enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the Unites States, any Assistant Attorney General of the United States, or any employee of the

Department of Justice or any employee of any Department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

1962 Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an

unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in or the establishment or operation of, any enterprise which is engaged in, or the acitivties of which affect, interestate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this

subsection of the securities of the issueer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign

commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises's affairs through a patterns of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections 2 (a), (b), or (c) of this section.

1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than

$25,000.00 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he had acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district court of the United States shall have jurisdiction to enter such restraining order or prohibitions, or to take such other

actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under ths section, the court shall authorize Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the

remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the aware of compensation to informers in respect of such forefeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

1964. Civil remedies.

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: order any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise,

making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the Court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the Court may at any time enter such restraining order or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reasons of a violation of section 1962 of this chapter may sue therefore in any appropriate United States District

Court and shall recover threefold and damages he sustains and the cost of the suit, including a reasonable attorneys' fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the Defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

1965 Venue and process

(a) Any civil action or proceeding under this chapter against any persons may be instituted in the District Court of the United States for any distirct in which such

person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the Court, the Court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court of

compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place that which such court is held without approval given by a judge or such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

1966. Expedition of actions.

In any civil action instituted

under this chapter by the United States in any district court of the United States, the Attorney General may file with the Clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as

practicable, participate in the hearings and determination thereof, and cause action to be expedited in every way.

1967. Evidence.

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control or any documentary materials relevant

to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall ---

(1) State the nature of the conduct constituting the alleged racketeering violation which is under investigtion and the provision of law applicable thereto;

(2) Describe the class or classes or documentary material produced thereunder which such definiteness and certainity as to permit such material to be fairly identified;

(3) State that the demand is

returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) Idenitfy the custodian to whom such material shall be made available.

(c) No such demand shall----

(1) Contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be

privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by

(1) Delivering a duly executed copy thereof to any partner, executed offer, managing agent, or general agent threof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) Delivering a duly executed copy thereof to the principal office

or place of business of the person to be served; or

(3) Depositing such copy in the United States mail by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facia proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as a racketeer

document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in

writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulation which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination,

without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such mateial or any duly authorized representative of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material

in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of --

(i) The racketeering investigation for which any documentary material was produced under this chapter, and

(ii) Any case or proceeding

arising from such investigation, the custodian shall return to the person who produced such material, all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising threfrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person

shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection to produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly ----

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction whic occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material can not be done and such person refuses to surrender

such material, the Attorney General may file, in the district of the United States for any judicial district in which such person resides, is found, or transacts business, and served upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any

person, or at any time before the return date specified in such demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in parts as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such

relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States of the judicial district within the office of such custodian is situated, and served upon such custodian a petition for an order of such court requiring the performance by such costodian of any duty imposed upon him by this section.

(j) Whever any petition is filed

in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

Supreme Court, U.S.
FILED
OCT 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

(2)

CASE NO. 86-447

in the Supreme Court of the United States

October Term, 1986

DAWN DEVELOPERS, INC., et al.,

Petitioners,

vs.

REAL ESTATE CORPORATION OF FLORIDA, N.V.,

Respondent.

On Writ of Certiorari to the Florida Fifth District Court of Appeal

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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16 pp

PARTIES IN PROCEEDING BELOW

Plaintiff/Counter-Defendant in the trial court, Appellee in the Florida Fifth District Court of Appeal, and Respondent in this Court:

Real Estate Corporation of Florida, N.V., a Netherlands Antilles corporation.

Counter-Defendants in the trial court, Appellees in the Fifth District Court of Appeal:

Community Developers of Osceola County, Inc., a Florida corporation;

Landstar Management Associates, Inc., a Florida corporation;

Greenway Advertising, Inc., a Florida corporation;

Mid-Florida Community Sales Corporation, a Florida corporation;

Orange-Osceola Management Corporation, a Florida corporation;

Community Developers of Orange County, Inc., a Florida corporation;

Landstar Management Corporation, a Florida corporation.[1]

Defendant/Counter-Plaintiff in trial court, Appellant in Florida Fifth District Court of Appeal, and Petitioner in this proceeding:

Dawn Developers, Inc., a Florida corporation.

Defendants in the trial court, Appellants in the Florida Fifth District Court of Appeal, and Petitioners in this proceeding:

Murray M. Golub;
Thomas L. Dyer.

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[1]These Counter-Defendants, who have no interest in this proceeding (which does not involve the counterclaim), are all affiliates of Respondent, Real Estate Corporation of Florida, N.V. Additional affiliates of Respondent are as follows: Wholly owned subsidiaries—Orange Osceola Utilities, Inc., Buenaventura Lakes Country Club, Inc.; Affiliates—Active—Centaur Construction Company, Country Creek Joint Venture, Landstar Management Corporation, Mid-Florida Community Sales Corporation, Urban Community Developers, Inc., Ranch Investments, Inc., Meadow Woods Shopping Center, Meadow Woods Country Club, Inc., Landstar Management Associates, MW Investment Group, Buenaventura Lakes Shopping Center; Affiliates—Inactive—Orange Osceola Management Corporation, E. S. Investment Group.

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CITATIONS TO JUDGMENTS BELOW

The judgment of the trial court, which is unreported, is set forth in Petitioners' appendix. The decision of the Florida Fifth District Court of Appeal, affirming the trial court's judgment without opinion, is reported: *Dawn Developers, Inc. v. Community Developers of Orange County, Inc.*, 489 So.2d 32 (Fla. 5th DCA 1986).

STATEMENT REGARDING JURISDICTION

The Petition for a Writ of Certiorari was initially received by the Clerk of this Court on August 25, 1986, but returned to Petitioners' counsel pursuant to Supreme Court Rule 33.7. Assuming that the new submission is in proper form, the Petition, which relies for jurisdiction on 28 U.S.C. §1257(3) (1982), is timely. Petitioners omit from their statement of jurisdiction, however, the concession at page 17 of their Petition that the federal issues "were not raised in the pleadings, at trial, or on appeal."

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners include in their appendix copies of the Florida statutory provisions involved and of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961 *et seq.* (1982). Petitioners omit, however, the constitutional provisions they purport to rely on, which are (in pertinent part) as follows:

U.S. Const. amend. V:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . . .

U.S. Const. art. 1, §10, cl. 1:

No State shall . . . pass any . . . law impairing the obligation of contracts . . . .

U.S. Const. art. 6, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

Petitioners concede (at page 17):

These constitutional issues were not raised in the pleadings, at trial, or on appeal.

Real Estate Corporation of Florida, N.V. ("REC") sued Dawn Developers, Inc. and its principals, Murray M. Golub and Thomas L. Dyer, under Florida common

law and Florida's Racketeering Influenced and Corrupt Organizations Act, Florida Statutes §§895.01 *et seq.* (1983).[2]

REC and Dawn Developers, Inc. built homes in Florida. Agreements between them provided for a division of sales proceeds net of land and sales costs and actual construction costs. Messrs. Golub and Dyer extracted secret, additional profits from the development through a sham subcontractor. The jury returned a verdict in REC's favor, and the trial court trebled REC's damages pursuant to Florida Statutes §895.05(7) (1983). Trebling was also appropriate under Florida's "civil theft statute." Florida Statutes §812.035 (1983).

The Florida Fifth District Court of Appeal affirmed without opinion.

SUMMARY OF ARGUMENT

Petitioners raise federal issues concerning the constitutionality of Florida statutes. Petitioners did not raise these issues in Florida courts. This Court should therefore deny review.

The Florida RICO statute does not violate due process by allowing civil remedies based on a preponderance of the evidence. That standard applies even under the federal RICO statute; this Court has expressed doubt that such a standard poses any serious constitutional problem.

---

[2]This Florida statute is substantially similar to the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961 *et seq.* (1982).

Nor is there here a violation of the Contract Clause. No impairment of contract exists; the parties' contractual relation post-dated Florida's enactment of civil remedies for racketeering.

Neither argument nor authority supports Petitioners' mere suggestion that the federal RICO Act preempts similar state legislation. This contention is frivolous, as are all others in Petitioners' brief.

ARGUMENT

I.

PETITIONERS' ADMITTED FAILURE TO RAISE ANY FEDERAL ISSUE BELOW PRECLUDES THIS COURT'S REVIEW

Petitioners concede (at page 17):

> These constitutional issues were not raised in the pleadings, at trial, or on appeal.

This Court should therefore not consider the petition. *See Heath v. Alabama*, 106 S.Ct. 433, 436 (1985):

> Even if we were not jurisdictionally barred from considering claims not pressed or passed upon in the state court, as has sometimes been stated, *see, e.g., State Farm Mutual Automobile Insurance Company v. Duel*, 324 U.S. 154 (1945); *Crowell v. Randell*, 10 Pet. 368 (1836), the longstanding rule that this court will not

consider such claims creates, at the least, a weighty presumption against review. *See, e.g., Illinois v. Gates*, 462 U.S. 213, 218-222 (1983).

II.

THE FEDERAL ISSUES RAISED HERE FOR THE FIRST TIME ARE FRIVOLOUS

a. The Florida RICO Statute Does Not Violate Due Process By Permitting Civil Remedies Based On A Preponderance Of The Evidence

The trial court instructed the jury that REC had to establish its racketeering claim by the "greater weight of the evidence."[3]

Petitioners claim that Florida's racketeering statute somehow deprived Petitioners of property without due process "by not requiring a criminal charge nor criminal standard of proof prior to imposition of civil penalties." Petitioners do not explain this argument or cite any authority.

This Court in *Sedima, S.P.R.L. v. Imrex Co.*, 105 S.Ct. 3275 (1985), reversed the United States Second Court of Appeals' imposition of a conviction requirement in a civil action under the federal RICO statute, and expressed doubt that the "preponderance of the

---

[3]*See Senfeld v. Bank of Nova Scotia Trust Company*, 450 So.2d 1157, 1163 and n. 8 (Fla. 3d DCA 1984); *Banderas v. Banco Central del Ecuador*, 461 So.2d 265 (Fla. 3d DCA 1985). Effective October 1, 1986, Florida requires "clear and convincing evidence" in civil racketeering actions. 1986 Laws Fla. ch. 86-277, enacting Florida Statutes §772.04 (1986 Supp.).

evidence" standard presented any serious constitutional question:

> We are not at all convinced that the predicate acts must be established beyond a reasonable doubt in a proceeding under §1964(c). In a number of settings, conduct that can be punished as criminal only upon proof beyond a reasonable doubt will support civil sanctions under a preponderance standard. There is no indication that Congress sought to depart from this general principle here. That the offending conduct is described by reference to criminal statutes does not mean that its occurrence must be established by criminal standards or that the consequences of a finding of liability in a private civil action are identical to the consequences of a criminal conviction. But we need not decide the standard of proof issue today. . . .
>
> The court below also feared that any other construction would raise severe constitutional questions, as it 'would provide civil remedies for offenses criminal in nature, stigmatize defendants with the appellation 'racketeer', authorize the award of damages which are clearly punitive, including attorneys' fees, and constitute a civil remedy aimed in part to avoid the constitutional protections of the criminal law.' *We do not view the statute as being so close to the constitutional edge.*

105 S.Ct. at 3282-83 (citations omitted, emphasis added).

b. The Florida RICO Statute Does Not Violate The Contract Clause

Petitioners posit as their second question for review:

> Whether Florida's RICO and Civil Theft Statutes are an unconstitutional infringement on the right to contract where petitioners' duties were contractual and on breach thereof petitioners were found liable for civil theft and RICO violations.

Petitioners do not explicate this argument and cite no authority. Whether Petitioners seek to invoke the contract clause, U.S. Const. art. 1, §10, cl. 1, or substantive due process under U.S. Const. amend. V, the argument is frivolous.

The first contract between these parties was entered in 1978. The Florida legislature provided civil remedies for racketeering in 1977.[4] There has therefore been no impairment of any contractual obligation. *See generally National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Railway Co.*, 470 U.S. 451 (1985). And, the due process clause does not prevent a state "from prohibiting contracts to engage in conduct banned by a valid state law." *Lincoln Federal Labor Union No. 19129, AFL, v. Northwestern Iron & Metal Co.*, 335 U.S. 525, 533-34 (1949); *New Motor Vehicle Board of California v. Fox*, 439 U.S. 96, 107 (1978).

[4]1977 Laws Fla. ch. 77-334 §5, then codified at Fla. Stat. §943.464 (1979), renumbered as Florida Statutes §895.05 by 1981 Laws Fla. ch. 81-141 §2.

c. The Federal RICO Statute Does Not Preempt The Florida RICO Statute

Petitioners posit as their third question for review:

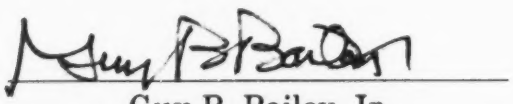
> Whether the Federal Racketeering Influenced and Corrupt Organization Act has preempted state legislation in the area.

Petitioners do not even mention this question in their argument, and, again, cite no authority. Nothing in or about the Racketeering Influenced and Corrupt Organization Act even suggests preemption. *See generally Wardair Canada, Inc. v. Florida Department of Revenue*, 106 S.Ct. 2369 (1986).

CONCLUSION

As Petitioners concede, no federal question was raised below. The supposed federal claims stated in the Petition are frivolous. The Petition should therefore be denied, and this Court should impose appropriate sanctions on Petitioners and their counsel.

Respectfully submitted,



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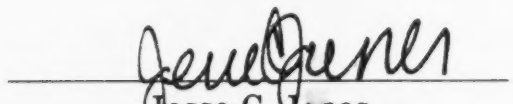

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